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## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ROANOKE DIVISION

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JOHN RY:	F. CONORRAN, CLERK
	DEPLITY OF FRIC

DANIEL PAYNE SHADWELL,	)
Petitioner,	) Civil Action No. 7:08-cv-00539
v.	MEMORANDUM OPINION
BRUCE CONOVER, <u>et al.,</u>	) By: Samuel G. Wilson
Respondent.	) United States District Judge

Petitioner Daniel Payne Shadwell, a Virginia inmate proceeding <u>pro se</u>, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Shadwell is challenging an order of the Winchester Juvenile and Domestic Relations Court finding him in civil contempt. The court finds that Shadwell has failed to exhaust his available state court remedies and, therefore, dismisses his petition without prejudice.

On April 3, 2008, the Winchester Juvenile and Domestic Relations Court found Shadwell in civil contempt for failing to pay five months of child support and sentenced him to six-months incarceration. According to his instant petition, Shadwell's state habeas petition is currently pending in the Supreme Court of Virginia.

A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. Preiser v. Rodriguez, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court must dismiss the petition. Slayton v. Smith, 404 U.S. 53 (1971). In Virginia, a non-death row felon ultimately must present his claims to the Supreme Court of Virginia and receive a ruling from that court, before a federal district court may consider his claims. See Va. Code §8.01-654. Inasmuch as Shadwell concedes that his state habeas petition is still pending in the Supreme Court of Virginia, the court dismisses Shadwell's instant petition, without prejudice, as unexhausted.

The Clerk is directed to send a certified copy of this Memorandum Opinion and accompanying Order to the petitioner.

ENTER: This 4/21 day of October, 2008.

United States District Judge